

For discussion on  
4 November 2003

**Bills Committee on  
Deposit Protection Scheme Bill**

**Deposit Protection Appeals Tribunal**

**Introduction**

A key feature of the deposit protection scheme (DPS) is the establishment of an independent Deposit Protection Appeals Tribunal (the Tribunal) to hear appeals from depositors and Scheme members against the decisions or assessments of the DPS Board or the Monetary authority (MA) made under the DPS legislation. This paper sets out the main proposals of the Administration in relation to the establishment and the proposed structure of the Tribunal.

**Jurisdiction of the Tribunal**

2. The Tribunal will have the jurisdiction to review the following decisions or assessments made by the DPS Board or the MA under the DPS legislation-

- (a) a decision of the Board under clause 30 of the Bill relating to the level of compensation that a person is entitled to receive under the DPS;
- (b) a decision of the Board relating to an application for exemption from participation in the Scheme in accordance with clause 12 of the Bill;
- (c) an assessment of the Board under clause 14 of the Bill relating to the amount of contributions payable by a Scheme member; and

- (d) a decision of the MA to require a Scheme member to maintain assets in Hong Kong in accordance with rules to be made under clause 51 of the Bill<sup>1</sup>.

3. Any person who feels aggrieved by a decision or assessment of the Board or the MA mentioned above may request a review by the Tribunal. The Tribunal is given the power to confirm, vary or set aside the relevant decision or assessment or remit the matter to the Board or the MA with any direction that it considers appropriate. In conducting a review, the Tribunal is required to afford the relevant parties an opportunity of being heard.

4. It should be noted that a Scheme member will not be allowed to ask the Tribunal to review the supervisory rating assigned to it by the MA. This is to avoid compromising the MA's powers to supervise banks. In other financial centres such as the U.S. and Canada, the supervisory ratings assigned by the regulators are also not subject to review by a third party.

### **Composition of the Tribunal**

5. It is recommended that the Tribunal be presided by a judge appointed by the Chief Executive on the recommendation of the Chief Justice. The appointment of a judicial officer to chair the Tribunal will lend credibility to the appellate mechanism and promote fair and equitable treatment of the parties.

6. The Chief Executive will also appoint a panel of persons, not being public officers, who will provide support to the Chairman. They would likely include relevant market practitioners, professional experts and persons with experience and interest in consumer or investor protection. From this Panel, it is proposed in clause 38 of the Bill that not fewer than 2 persons will be appointed by the Chairman of the Tribunal as members of the Tribunal. However, on further examination, the Judiciary has recently advised that it would be more appropriate to follow an appointment arrangement similar to

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<sup>1</sup> This clause empowers the MA to make rules, after consultation with the Hong Kong Association of Banks, requiring a Scheme member to maintain assets in Hong Kong under certain circumstances such as where the financial soundness of the Scheme member is in doubt and the assets maintained by the Scheme member in Hong Kong are insufficient to cover its protected deposits. The underlying objective is to ensure that there would be sufficient assets to pay off the claims of the DPS Board in the event of a liquidation.

that of the Securities and Futures Appeal Tribunal (“SFAT”) under the Securities and Futures Ordinance, whereby members are appointed by another authority (e.g. the Financial Secretary) on the recommendation of the Chairman. The Judiciary advises that this arrangement would better maintain the neutrality of the Chairman. We therefore intend to introduce a Committee Stage Amendment to this effect.

### **Powers of the Tribunal**

7. The Tribunal will be given the necessary powers to discharge its functions. These powers, which are set out in clauses 40 and 42 of the Bill, are consistent with those given to the Securities and Futures Appeals Tribunal established under the Securities and Futures Ordinance. In particular, the Tribunal will be given the same powers as the Court of First Instance to punish for contempt. This would strengthen the authority and ability of the Tribunal in enforcing its own procedures<sup>2</sup>. The Chief Justice may make rules governing such procedures.

### **Appeal to the Court of Appeal**

8. It is recommended that the determinations of the Tribunal should be final and should not be subject to further appeal on a point of fact. However, a party to a review may, under clause 43 of the Bill, appeal to the Court of Appeal against a determination of the Tribunal on a point of law.

Hong Kong Monetary Authority  
Financial Services and the Treasury Bureau  
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<sup>2</sup> The Securities and Futures Appeals Tribunal is also given the same powers (see section 221 of the Securities and Futures Ordinance).